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HUMAN RIGHTS COMMITTEE
Sixty-first session

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 40 OF THE COVENANT

Concluding observations of the Human Rights Committee

Iraq

1. The Committee considered the fourth periodic report of Iraq (CCPR/C/103/Add.2) at its 1626th and 1627th meetings, on 27 October 1997, and subsequently adopted 1/ the following observations:

A. Introduction

2. The Committee welcomes the State party's fourth periodic report, and notes its timely submission and the willingness of Iraq to have a continued dialogue with the Committee. The Committee regrets that while the report provided information on Iraq's legislative framework, it did not deal with the actual state of implementation of domestic laws and of the Covenant, nor with the difficulties encountered in the course of their implementation. The presence of a delegation from the capital, which answered questions asked by members of the Committee and provided clarification on the situation in Iraq, is also welcomed by the Committee.

B. Factors and difficulties affecting the implementation of the Covenant

3. The Committee recognizes that eight years of war with the Islamic Republic of Iran and the conflict following Iraq's invasion of Kuwait caused the destruction of part of the country's infrastructure and considerable human suffering, and produced a very difficult economic and social situation in Iraq.

1/ At the 1640th meeting, held on 5 November 1997.

4. The Committee notes that the effect of sanctions and blockades has been to cause suffering and death in Iraq, especially to children. The Committee reminds the Government of Iraq that, whatever the difficulties, the State party remains responsible for implementing its obligations under the Covenant.

C. Positive aspects

5. The Committee welcomes the adoption of Revolutionary Command Council Decree No. 91 of 1996, which repeals the application of the death penalty and amputation in certain cases.

6. The Committee welcomes the repeal of Revolutionary Command Council Decree No. 111 of 1990, which exempted from prosecution certain "crimes of honour" involving the killing of female relatives.

D. Subjects of concern and the Committee's recommendations

7. The Committee is deeply concerned that all government power in Iraq is concentrated in the hands of an executive which is not subject to scrutiny or accountability, either politically or otherwise. It operates without any safeguards or checks and balances designed to ensure the proper protection of human rights and fundamental freedoms in accordance with the Covenant. This appears to be the most significant factor underlying many violations of Covenant rights in Iraq, both in law and in practice.

8. The Committee regrets that many of its questions relating to allegations of serious violations of rights were not answered. In particular, the Committee notes with grave concern reports from many sources concerning the high incidence of summary executions, arbitrary arrests and detention, torture and ill-treatment by members of security and military forces, disappearances of many named individuals and of thousands of people in northern Iraq and in the Southern Marshes, and forced relocations. In this respect, the Committee expresses its regret at the lack of transparency on the part of the Government in responding to these concerns. The Committee also notes the statement by the delegation that a non-governmental committee has been established to deal with disappearances, and regrets that it was not able to obtain information on its functions or on its powers to investigate cases of involuntary disappearance, to bring those found responsible to justice and to otherwise prevent and combat disappearances in Iraq. Therefore:

> The Committee recommends that all allegations mentioned above be fully, publicly and impartially investigated, that the results of such investigations be published and that the perpetrators of those acts be brought to justice. Information on the powers, functions and activities of the committee responsible for dealing with disappearances should be provided in the State party's next periodic report.

9. The Committee regrets that temporary decrees adversely affecting the implementation of certain Covenant rights have recently been enacted by the Revolutionary Command Council. In addition, the Committee expresses its concern that certain provisions of these decrees, which the State party has

sought to justify on the ground that they are provisional, are incompatible with certain non-derogable Covenant rights, such as the right to life, the prohibition of torture and the principle of non-retroactivity of criminal laws. Therefore:

> The Committee recommends that a thorough review of existing temporary laws and decrees be undertaken with a view to ensuring their compliance with the provisions of the Covenant. In this regard, the Committee stresses that Covenant rights may be derogated from only in accordance with article 4 of the Covenant.

10. The Committee also notes with great concern the increase in the categories of crimes punishable by the death penalty, pursuant to Revolutionary Command Council Decrees No. 13 of 1992, No. 9 of 1993, Nos. 86, 95, 179 and 118 of 1994, and No. 16 of 1995, and that the new categories include non-violent and economic infringements. These measures are incompatible with Iraq's obligations under the Covenant to protect the right to life. Therefore:

> The Committee recommends that Iraq abolish the death penalty for crimes which are not among the most serious crimes, in accordance with article 6, paragraph 2, of the Covenant, and that total abolition of the death penalty be considered. In this regard, the State party should give careful consideration to the observations in the Committee's General Comment No. 6 on the right to life, and in particular those concerning the restricted scope of the expression "most serious crimes".

11. The Committee expresses concern that Revolutionary Command Council Decree No. 115 of 25 August 1994 violates the provisions of article 6, paragraph 2, of the Covenant, which restricts the application of the death penalty to the "most serious crimes", by stipulating that the death penalty will be imposed on persons who have evaded military service several times, and that it contains retroactive provisions, contrary to article 15 of the Covenant. The Committee therefore recommended that:

> The application of this decree should be suspended without delay and steps should be taken to repeal it.

12. The Committee is deeply concerned that Iraq has resorted to the imposition of cruel, inhuman and degrading punishments, such as amputation and branding, which are incompatible with article 7 of the Covenant. Similarly, the Committee is deeply concerned by Revolutionary Command Council Decree No. 109 of 18 August 1994, which stipulates that any person whose hand has been amputated for a crime thus punishable by law shall be branded between the eyebrows with an "X" symbol, by the application of this decree retroactively to persons whose hands have already been amputated, and by the explanation given by the delegation that this punishment was imposed to distinguish convicted offenders from persons mutilated in the war. In this regard:

> The imposition of such punishments should cease immediately, and all laws and decrees providing for their imposition, including RCC Decree No. 109 of 1994, should be revoked without delay.

13. The Committee expresses concern about the continued operation of family and inheritance laws which are incompatible with the principle of gender equality under articles 2, paragraph 1, 3, 23 and 26 of the Covenant. Therefore:

> Steps should be taken to promote and ensure full equality between men and women in the political, economic, social and cultural life of the country, and to eliminate all forms of legal and de facto discrimination against women.

14. The Committee notes with concern reports of arbitrary restrictions imposed by the authorities on the right to freedom of movement within Iraq and freedom to leave the territory of the State party, in breach of Iraq's obligations under article 12 of the Covenant. Therefore:

> Measures should be taken to ensure that article 12 is complied with and, among other things, that administrative costs for the issue of passports be reduced.

15. The Committee further notes with concern that special courts, which may impose the death penalty, do not provide for all procedural guarantees required by article 14 of the Covenant, and in particular the right of appeal. It also notes that in addition to the list of offences which are under the jurisdiction of the special courts, the Minister of the Interior and the Office of the President of the Republic have discretionary authority to refer any other cases to these courts. In that regard:

> Courts exercising criminal jurisdiction should not be constituted other than by independent and impartial judges, in accordance with article 14, paragraph 1, of the Covenant. The jurisdiction of such courts should be strictly defined by law and all procedural safeguards protected by article 14, including the right of appeal, should be fully respected.

16. With respect to article 19 of the Covenant on the right to freedom of expression, the Committee is concerned about severe restrictions on the right to express opposition to or criticism of the Government or its policies. The Committee is also concerned that the law imposes life imprisonment for insulting the President of the Republic, and in certain cases death. It also imposes severe punishments for vaguely defined crimes which are open to wide interpretation by the authorities, such as writings detrimental to the President. Such restrictions on freedom of expression, which effectively prevent the discussion of ideas or the operation of political parties in opposition to the ruling Ba'ath party, constitute a violation of articles 6 and 19 of the Covenant and impede the implementation of articles 21 and 22 of the Covenant, which protect the rights to freedom of peaceful assembly and association. Therefore:

> Penal laws and decrees which impose restrictions on the rights to freedom of expression, peaceful assembly and association should be amended so as to comply with articles 19, 21 and 22 of the Covenant.

17. The Committee expresses concern about restrictions, prohibitions and censorship imposed on the creation and functioning of independent broadcasting media, as well as on the dissemination and broadcasting of foreign media, which are not in conformity with the requirements of article 19, paragraph 3, of the Covenant. Therefore:

> Laws and decrees dealing with the press and other media should be amended to comply with article 19, paragraph 2, of the Covenant, which protects the right to freedom of expression, including the "freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of (one's) choice".

18. The Committee is concerned that under article 38 (c) of the Constitution, the members of the Revolutionary Command Council are not elected by universal and equal suffrage. This is incompatible with the right of citizens to take part in the conduct of public affairs, under article 25 (a) and (b) of the Covenant. Therefore:

> The Committee recommends that steps be taken with a view to ensuring citizens the right and the opportunity to take part in the conduct of public affairs, either directly or through freely chosen representatives.

19. The Committee is also concerned that article 42 of the Constitution gives power to the Revolutionary Command Council to issue laws, decrees and decisions without being subject to independent scrutiny or review to ensure their compliance with the provisions of the Covenant. Therefore:

> Provision should be made to ensure that individuals whose rights may be violated by such laws, decrees or decisions have an effective remedy as required by article 2, paragraph 3, of the Covenant.

20. The Committee expresses concern about the situation of members of religious and ethnic minorities, as well as other groups which are the subject of discrimination in Iraq, in particular the Shi'ite people in the Southern Marshes and the Kurds. The Committee also regrets the lack of information on the situation of other minorities, such as the Turkeman, Assyrian, Chaldean and Christian minorities, and on the enjoyment of their rights under articles 26 and 27 of the Covenant. In this connection, the Committee calls attention to its General Comment No. 23 (50) on article 27 of the Covenant. Further:

> The Committee recommends that measures be taken to ensure full equality of rights for members of all religious groups as well as ethnic and linguistic minorities, and that information be provided in the State party's next periodic report on the implementation of articles 26 and 27 of the Covenant.

21. The Committee notes with concern reports concerning the difficulties faced by non-governmental organizations in regard to their establishment and functioning. Therefore:

> The Committee recommends that steps be taken without delay to facilitate the establishment and free operation of independent non-governmental organizations, with particular reference to those working in the field of human rights.

22. The Committee draws to the attention of the Government of Iraq the provisions of the guidelines regarding the form and contents of periodic reports from States parties and requests that its next periodic report, due on 4 April 2000, contain material which responds to all the present concluding observations. The Committee further requests that these concluding observations be widely disseminated among the public at large in all parts of Iraq.